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City of Lawrence
Attn: David L. Corliss
Assistant City Manager
6 E. 6th Street
P.O. box 708
Lawrence, Kansas 66044

Re: P.I.G. Encroachment Agreement, 133 Perry

Dear David:

These mobile homes have been on this site in their current positions since the 1960s and could only be moved to the landfill as they would literally fall apart if moved. Based on the size of the trees in the roadways, the city has not maintained the roads since the 1960s, so we would not be doing anything but maintaining the status quo of over a third of a century. We are trying to provide affordable housing and any moving of the trailers would be too expensive.

Sincerely,



Darryl Graves
June 29, 2005

lw

RIGHT-OF-WAY ENCROACHMENT AGREEMENT

THIS ENCROACHMENT AGREEMENT (the “**Agreement**”) is a Kansas General Partnership, tax I.D. #74-2843804, made this _____ day of _____ 2005 (the “**Effective date**”) by the City of Lawrence, Kansas, a municipal corporation (the “**City**”), and **Partners in Grace**, Darryl Graves and G. Rand Allen (“**Owners**”), owners of property legally described as:

LOTS 70, 71, 72, 73, and 74, ADDITION NO. 2, A SUBDIVISION IN THAT PART OF THE CITY OF LAWRENCE KNOWN AS NORTH LAWRENCE, ALL IN DOUGLAS COUNTY, KANSAS

RECITALS

1. The City is the holder of the Lincoln Street Right-of-Way (ROW) located in the part of the City of Lawrence known as North Lawrence, Douglas County, Kansas.
2. The City is the holder of the Perry Street Right-of-Way (ROW) located in the part of the City of Lawrence known as North Lawrence, Douglas County, Kansas.
3. The City is the holder of the First Street Right-of-Way (ROW) located in the part of the City of Lawrence known as North Lawrence, Douglas County, Kansas.
4. Owners are the owners of certain real estate (the “**Property**”), located adjacent to and along the Lincoln Street ROW, the Perry Street ROW, and the First Street ROW, in the part of the City of Lawrence known as North Lawrence, Douglas County, Kansas and legally described above and in Addendum A, a survey taken September 15, 2004, provided to the City by Owners.
5. Owners wish to continue the existing encroachment of mobile homes in the Lincoln Street ROW and Perry Street ROW. Accordingly, the Owners have requested permission from the City to maintain mobile homes on portions of the Lincoln Street ROW and Perry Street ROW, and the City has agreed to provide an encroachment agreement to owners for such purpose, all in accordance with the terms and conditions of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the mutual promises and obligations contained herein, the parties hereby agree as follows:

1. **Acknowledgement of Encroachment.** The City hereby grants to the Owners the non-exclusive license, right, privilege, and permission to use in common with others, the following:

- a. That portion of the Lincoln Street ROW adjacent to Lot 74, Addition No. 2, on which mobile home Unit No. 5, and mobile home Unit No. 4 are currently located, for the purpose of maintaining the use of said mobile homes.
 - b. That portion of the Perry Street ROW adjacent to Lot 70, Addition No. 2 on which mobile home Unit No. 1, mobile home Unit No. 8, and mobile home Unit No. 9 are currently located, for the purpose of maintaining the use of said mobile homes.
2. **No Representation by the City.** The Owners represent that the City has made no representations with respect to the Lincoln ROW or its condition, nor the Perry ROW or its condition, and that the Owners are not relying on any representations of the City or the City's agents with respect to the use or condition of either ROW. This Agreement grants the Owners the privilege and permission to use either ROW in their present condition "as is" without any warranties.
3. **Covenants of the Owners.** The Owners hereby covenant and warrant to the City, as follows:
 - a. To maintain the mobile homes at the Owners' sole cost and expense, and to remove all debris and other items placed in either ROW by Owners, or as a result of Owners' use of either ROW.
 - b. If any of the mobile homes need to be moved for the installation, repair, or maintenance of any utilities or for any street improvement or other lawful purposes, located or to be located in, on, under or through either ROW, the Owners shall, at their sole cost and expense, move the mobile home(s) from the ROW.
 - c. To comply with all applicable laws and ordinances, including land use requirements of the City of Lawrence and the County of Douglas, Kansas.
 - d. To refrain from causing any waste, damage, or injury to either ROW.
 - e. The Owners shall not have any right to enlarge the present scope of this Encroachment Agreement, without the prior written consent of the City.
 - f. The Owners, and all future owners, agree to remove mobile home Unit No. 2, located on Lots 71 and 72, from within the First Street ROW as currently shown in the survey provided to the City by Owners (Addendum A). Said Mobile Home is currently owned by Marvin & Edna Copp and in accordance with Kansas law the required 60 Day notice to move was given to the Copps on June 2, 2005.

4. **Indemnification of the City.** During the time this Agreement is in effect, the Owners agree to indemnify, defend, and save the City, and the City's officers, commissioners, agents, employees, grantees, and assigns, harmless from and against all claims, actions, liabilities, damages, costs, expenses, and judgments, including attorneys' fees, which relate to, arise from, or are in connection with the Owners' use or occupancy of the Lincoln Street ROW or Perry Street ROW, or any portion thereof or the maintenance of the mobile homes on either ROW, on account of any injury to persons or damage to property, excluding therefrom such injury or damage caused by the negligence of the City.
5. **Accommodation.** The permission granted to the Owners under this Agreement is given to the Owners as accommodation, and shall be without charge to the Owners. The Owners hereby acknowledge the City's rights to the Lincoln Street ROW and Perry Street ROW, and agrees to never assail, resist, or deny such rights by virtue of the Owners' occupancy or use under this Agreement.
6. **Term and Termination.** The City reserves the right to terminate the permission granted by this Agreement at any time and for any reason by giving the Owners at least 30 days written notice of such termination, except that the City may, at the City's election, terminate the permission immediately without such notice at any times, if (i) the Owners fails to comply with or abide by each and all of the provisions of this Agreement, or (ii) if the continued use of the Agreement presents a health or safety hazard.
7. **Binding Effect.** This Agreement shall, at all times, be binding upon the City and the Owners and all owners of the Property and all parties claiming by, through, or under them, shall run with the land, and shall be for the benefit of and limitations upon all future owners of the Property; provided, however, that the rights, duties, and obligations, of each owner as set forth herein shall cease with the termination of his or its ownership of the Property, or portion thereof, except for the duties and obligations arising during the period of his or its ownership.
8. **Governing Law.** This Agreement shall be construed and enforced in accordance with, and governed by, the law of the State of Kansas.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed as of the Effective Date.

ON BEHALF OF THE OWNERS:



Darryl Graves
Partner In Grace Managing Member

STATE OF KANSAS)
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 30 day of June, 2005, before me, the undersigned, a Notary Public in and for the County and State aforesaid came Darryl Graves, who is personally known to me to be the same person who executed the within and foregoing instrument of writing, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Laura Wilson
Notary Public

My Commission Expires: 11/25/07

Laura Wilson
NOTARY PUBLIC
State of Kansas
Expires _____

And,

G. Rand Allen
G. Rand Allen
Partner In Grace Managing Member

STATE OF KANSAS)
COUNTY OF DOUGLAS)

BE IT REMEMBERED, that on this 30 day of June, 2005, before me, the undersigned, a Notary Public in and for the County and State aforesaid came G. Rand Allen, who is personally known to me to be the same person who executed the within and foregoing instrument of writing, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Laura Wilson
NOTARY PUBLIC
State of Kansas

Laura Wilson
Notary Public

Expires _____

My Commission Expires: 11/25/07

ON BEHALF OF THE CITY OF LAWRENCE:

Mike Wildgen, City Manager

BE IT REMEMBERED, that on this _____ day of _____, 2005, before me, the undersigned, a Notary Public in and for the County and State aforesaid came Mike Wildgen, City Manager, who is personally known to me to be the same person who executed the within and foregoing instrument of writing, and duly acknowledged the execution of the same.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal the day and year last above written.

Notary Public

My Commission Expires: _____